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HUMAN RIGHTS COMMITTEE
Sixty-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Kuwait

1. The Committee considered the initial report of Kuwait (CCPR/C/120/Add.1) at its 1851st, 1852nd, 1853rd and 1854th meetings (CCPR/C/SR.1751-54) held on 18-19 July 2000 and adopted the following concluding observations at its 1864th and 1865th meetings (CCPR/C/SR.1864 and 1865) held on 26 and 27 July 2000.

A. Introduction

2. The Committee has examined the initial report of Kuwait and the additional information and statistics furnished by the Delegation. The Committee appreciates the frankness with which the report and the Delegation acknowledged the problems encountered in the implementation of the Covenant, and the State party's undertaking to provide further information and statistics in writing. While welcoming the abundance of laws and tables submitted for examination, the Committee noted that the report and the Delegation did not sufficiently explain how Covenant rights are enjoyed in practice by the generality of the people within its territory and subject to its jurisdiction.

B. Principal subjects of concern and recommendations

3. The Committee notes with concern that the position of Covenant rights in the laws of Kuwait is not clear, due to contradictory constitutional provisions. It remains unclear, notwithstanding the explanation given by the Delegation, whether individuals can invoke the provisions of the Covenant directly before Kuwaiti courts.

The State party should guarantee that all rights provided for in the Covenant

are respected and ensured, in order that all individuals within the territory of Kuwait and subject to its jurisdiction have full enjoyment of these rights and are afforded remedies pursuant to article 2 of the Covenant.

4. The Committee, referring to its General Comment No. 24 on Reservations (CCPR/C/21/Rev.1/Add.1), notes that the "interpretative declarations" of the State party regarding article 2, paragraph 1, article 3, and article 23, as well as the "reservations" concerning article 25 (b) of the Covenant raise the serious issue of their compatibility with the object and purpose of the Covenant. In particular, the Committee notes that articles 2 and 3 of the Covenant constitute core rights and overarching principles of international law that cannot be subject to "limits set by Kuwaiti law". Such broad and general limitations would undermine the object and purpose of the entire Covenant.

The Committee finds that the interpretative declaration regarding articles 2 and 3 contravenes the State party's essential obligations under the Covenant and is therefore without legal effect and does not affect the powers of the Committee. The State party is urged to withdraw formally both the interpretative declarations and the reservations.

5. Discrimination against women limit the enjoyment by women of their rights under the Covenant. In particular, pursuant to the Act on Personal Status, women cannot freely marry before they are 25 years of age, except with the approval of a guardian, who is usually the father or a judge, women's right to marry non-Kuwaiti citizens is restricted, and the age of marriage for men and women is different (17 for men, 15 for women). The Committee is concerned that polygamy is still practised in Kuwait, that men and women who commit adultery are not treated equally, and that toleration of so-called "crimes of honour" add to the existing inequality between the sexes.

Kuwait must grant women effective equality in law and practice and ensure their right to non-discrimination as stipulated in article 26 of the Covenant. Polygamy should be prohibited by law. The Committee refers to its General Comment No. 28 on Equality between Men and Women and urges the State party to take all necessary measures to sensitize the population, so as to eradicate attitudes that lead

to discrimination against women in all sectors of daily life and society.

6. The Committee is deeply concerned that, in spite of constitutional provisions on equality, Kuwait's electoral laws continue to exclude entirely women from voting and being elected to public office. It notes with regret that the Amir's initiatives to remedy this situation were defeated in Parliament.

The State party should take all the necessary steps to ensure to women the right to vote and to be elected on equal footing with men, in accordance with articles 25 and 26 of the Covenant.

7. The Committee, while commending the State party for recent progress achieved in granting women access to higher education and positions in public life, including the legal profession, continues to be concerned that the percentage of women in those higher positions remains low and that, while women hold positions as investigative judges, there is not one woman serving as a judge in the Courts.

The State party should ensure that women fully enjoy their rights under article 25(c) of the Covenant.

8. The Committee expresses serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug related crimes. It also regrets that, according to the Delegation, there are 28 persons currently on death row and that death sentences have continued to be carried out since the Covenant entered into force in Kuwait.

The State party should ensure that the provisions of article 6 of the Covenant are strictly observed, and that the death penalty is not imposed except for crimes that can be seen to be the most serious crimes, following proceedings in which all the guarantees for a fair trial under article 14 of the Covenant are observed. The State party is invited to consider the abolition of the death penalty, in the spirit of article 6, paragraph 6, of the Covenant.

9. The Committee notes that abortion is a crime under Kuwaiti law and that the law

makes no provision for exceptions on humanitarian grounds.

The State party should consider amending the law and make provision for the protection of the right to life of pregnant women under article 6 of the Covenant.

10. The Committee is concerned about the number of persons still detained under prison sentences handed down in 1991 by the Martial Law Courts in trials, which did not meet the minimum standards set by article 14 of the Covenant, in particular the principles of equality before the courts, the impartiality of the tribunal, the presumption of innocence, the right to have adequate time and facilities for the preparation of the defence, and other rights of due process under article 14, paragraphs 3 and 5, of the Covenant.

The cases of persons still held under such sentences should be reviewed by an independent and impartial body, and compensation should be paid pursuant to articles 9, paragraph 5, and 14, paragraph 6, of the Covenant, where appropriate.

11. The Committee expresses concern over the many reported cases of persons detained in 1991 who have subsequently disappeared, many of them Palestinians with Jordanian passports, Kurds and other persons formerly residing in Kuwait. While the Delegation acknowledges only one case, other sources suggest that the fate of at least 62 persons, whose names have been communicated to the State party, remains unknown. The Committee notes with appreciation the Delegation's undertaking to receive and investigate this and other lists of names, and in this connection refers to the State party's cooperation with the UN Working Group on Disappeared Persons (see Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2000/64, paras. 113-4).

In accordance with articles 2, paragraph 3, 6, 7 and 16 of the Covenant, the State party should adopt concrete measures to clarify each and every case of disappearance, and inform the Committee in its next report.

12. The Committee is concerned about the fact that a detained person may be held in police custody for a period of 4 days before being brought before an investigating official,

and notes that, according to the report and the oral explanations given by the Delegation, it would appear that this period may be extended.

The Committee stresses that the period of police custody before a detained person is brought before a judge should not exceed 48 hours. The State party should ensure that anyone arrested or detained on a criminal charge is brought promptly before a judge or other officer authorized by law to exercise judicial power (article 9, paragraph 3), that all other aspects of its law and practice be harmonized with the requirements of article 9 of the Covenant, and that detained persons have immediate access to counsel and contact with their families. In the next report precise statistics should be provided on the number of persons held in pre-trial detention and the length of such detention.

13. The Committee is concerned about reported cases of abuses by the Kuwaiti police, in contravention of articles 7 and 10 of the Covenant. The Committee notes nevertheless the State party's increased cooperation with international institutions such as the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, which facilitate international monitoring of prison conditions.

All cases of abuse by the police and prison personnel should be investigated by independent authorities, action should be taken against perpetrators, and victims should be granted compensation.

14. The Committee cannot accept the statement of the Delegation that there are no minorities in Kuwait. Given the wide diversity of persons in the State party's territory and subject to its jurisdiction, it is clear that, in fact, there are persons in Kuwait who belong to ethnic, religious and linguistic minorities whose rights under article 27 of the Covenant should be ensured and protected.

The next periodic report should contain comprehensive information on all minority related issues arising under article 27 of the Covenant.

15. The Committee remains gravely concerned about the treatment of the Bedoons

(included in the category of stateless persons) in Kuwait, numbering several thousands. In view of the fact that many of these people are born or have been living in the territory of Kuwait for decades, and some are in the service of the Government, the Committee is gravely concerned over the sweeping statement of the Delegation characterizing the Bedoons generally as "illegal residents". The Committee is concerned that many Bedoons, long resident in Kuwait, who left the country during the Iraqui occupation in 1990-91 are not permitted to return to Kuwait.

The State party must ensure that all persons in its territory and subject to its jurisdiction, inlcuding Bedoons, enjoy Covenant rights without discrimination (article 26). The right to remain in one's own country and to return to it must be scrupulously respected (article 12).

16. The Committee is further concerned of the fact that the Delegation did not refute allegations that Bedoons have been offered a five year residence permit in exchange of renouncing any claims for naturalization and that the State party seeks to deport Bedoons to countries without any effective link with the person.

The State party should confer its nationality on a non-discriminatory basis and ensure that those who are granted Kuwaiti nationality are treated equally with other Kuwaiti citizens with regard to voting rights (articles 25, 26 of the Covenant). The State party is urged to refrain from deporting residents on the basis of classifying them as Bedoons who have failed to regularise their status.

17. The Committee is concerned about the lack of information concerning the situation of children of non-Kuwaiti parents living in Kuwait, in particular with regard to education, medical care, and the issuance of birth and death certificates. The Committee is further concerned that children who are born in Kuwait and whose parents are stateless or only the mother has Kuwaiti nationality do not acquire any nationality.

The State party should ensure the right of all children in Kuwait to measures of special protection pursuant to article 24 and 26 of the Covenant. The State party is under an obligation to respect article 24, paragraph 3, of the Covenant, in order to

ensure that every child has the right to acquire a nationality.

18. The Committee is concerned about other instances of discrimination, in particular the naturalization of Muslim applicants exclusively. It is also concerned that the legal consequence of a conversion from Islam to another religion may result in the loss of Kuwaiti nationality.

The laws on naturalization and nationality should be amended to ensure that their application does not entail discrimination on any of the grounds enumerated in article 26 of the Covenant.

19. The Committee is concerned about the lack of information concerning detention of persons awaiting deportation.

The State party should ensure that all the rights protected under the Covenant are respected vis à vis these persons, in particular article 9, 10, 12 and 13, and provide information on these matters in its second periodic report.

20. The Committee is concerned about the limits imposed on freedom of expression and opinion in Kuwait, which are not permissible under article 19, paragraph 3, of the Covenant, and refers in this connection to its General Comment No. 10. The Committee is particularly concerned about the vagueness of Chapter III of Law No. 3 of 1961 on Printing and Publication (report, para. 240), and about restrictions imposed on academic and press freedom, the temporary closing of a newspaper, the banning of certain books; it is alarmed at the criminal prosecution, imprisonment and fining of authors and journalists in connection with their non-violent expression of opinion, and artistic expression, which in some cases has been deemed to be disrespectful of Islam and in other cases held to be pornographic. The Committee is concerned about the implications of penal proceedings against journalists requiring them to prove their good faith and reveal their sources, raising issues not only under article 19 but also with regard to the presumption of innocence guaranteed by article 14, paragraph 2, of the Covenant.

The State party should ensure that every person can enjoy his or her rights under article 19 of the Covenant without fear of being subjected to harassment. The Press and Publications Law and the Penal Code should be brought into harmony with article 19 of the Covenant. Any restriction on the rights under article 19 must be in strict conformity with paragraph 3 of that article.

21. The Committee is concerned about Kuwait's legislation on associations, in particular Law No. 24 of 1962 on the Organization of Clubs and Community Service Societies, and about the difficulties encountered by Kuwaitis in exercising their rights under article 22 of the Covenant. In particular, the Kuwaiti Society for Human Rights has not been able to register as an association since 1992.

The State party should amend Law No. 24, encourage the formation of human rights non-governmental organizations in Kuwait and further their activities so as to enable a culture of human rights to flourish and expand.

22. The Committee expresses concern that the right of foreign and domestic workers to form and join trade unions and to take part in their activities is restricted de facto.

The State party should enable all parts of the labour force to join and to engage in the activities of trade unions, for example by informing them of their rights under article 22, paragraph 1, of the Covenant.

23. The Committee is concerned about the absence of political parties in Kuwait.

Bearing in mind that political parties constitute an important component of democracy, the State party should take appropriate measures so as to ensure the right of Kuwaitis to establish such parties, in conformity with articles 22 and 25 of the Covenant.

24. The Committee notes the existence of compulsory military service and that Kuwaiti

law does not contain any provision on conscientious objection.

In order to implement article 18 of the Covenant, the State party should reflect in its legislation the situation of persons who believe that the use of armed force conflicts with their convictions, and establish for these cases an alternative civilian service.

25. The Committee, while noting the establishment of a Human Rights Commission in the Ministry of the Interior and of a Human Rights Committee in the National Assembly, encourages the State party to establish a truly independent and effective mechanism to ensure effective remedies as required by article 2, paragraph 3, of the Covenant.

C. Date of examination of second periodic report
Dissemination of information

26. The Committee requests that the State party submit its second periodic report by 31 July 2004; this report should be prepared in compliance with the Committee's new guidelines (CCPR/C/66/GUI/Rev.1), provide gender disaggregated data and up to date statistics on the condition of women, and give particular attention to the recommendations made in these concluding observations. The Committee urges the State party to make available to the public the text of the State party's initial report together with the present concluding observations. It further requests that the second periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in Kuwait.

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